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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,233	11/16/2001	Jess E. Croya	PAY 001	6880
7590 11/17/2004 Judy Jarecki-Black, Ph.D., J.D. 467 Ware Road Carnesville, GA 30521			EXAMINER GONZALEZ, MADELINE	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

10/2

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/993,233	CROYA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Madeline Gonzalez	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2004 and 05 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

In response to applicant's reply dated September 2, 2004

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (U.S. 5,894,677) in view of Anderson (U.S. 1,986,551).

Hoffman discloses a measuring device 210, as shown in Fig. 5, having:

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- a housing 230 having a top wall 240 and a bottom wall 242 separated by a first spaced end wall 236 and a second spaced end wall 238;
- an opening 244 disposed in said first spaced end wall 236;
- a tape 246 having a top side and a bottom side, said tape 246 comprising an extendable length of substantially strong and durable, yet bendable material retractably disposed within said housing 230, said tape 246 including an attachment end and a terminal end;
- said tape 246 being normally, retractably stored in said housing 230 with said attachment end fixedly secured within said housing 230 and said terminal end protruding through said opening 244 and being at all times exteriorly accessible of said opening 244;
- said terminal end having an upper flange 450b and a lower flange 450b, as shown in Fig. 7, said upper flange 450b extending upwardly and said lower flange 450b extending downwardly from said tape 246 and positioned substantially perpendicular to said tape 246;
- said top side having graduated indicia comprising a measuring scale extending along substantially the entire length of said tape 246, said indicia having a point of origin, said point originating from the terminal end; and
- wherein the top side and the bottom side of said tape are planar.

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Hoffman lacks the bottom side having indicia with an identical point of origin, said point originating from the terminal end; and the top side and the bottom side of the tape being arcuate in cross section.

With respect to the bottom side having indicia with an identical point of origin, said point originating from the terminal end; and the top side and the bottom side of the tape being arcuate in cross section: Anderson discloses a measuring device as shown in Fig. 1, having a measuring tape 10 having a top side and a bottom side having graduated indicia including a measuring scale extending along the entire length of the tape 10, said indicia having an identical point of origin, said point originating from a terminal end, as shown in Figs. 1 and 2. The top side and the bottom side of the tape 10 are arcuate in cross section (see column 2, lines 10-12). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add indicia originating at the terminal end on the bottom side of the tape as taught by Anderson to the measuring tape disclosed by Hoffman in order to be able to use the measuring tape on both sides. Furthermore, it would have been obvious to provide the tape disclosed by Hoffman with a top side and a bottom side having an arcuate cross section, in order to provide a close straight-edge reading when the tape is applied to the object to be measured, as suggested by Anderson (see column 2, lines 17-19).

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4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (U.S. 5,894,677) in view of Anderson (U.S. 1,986,551) as applied to claims 1, 4 and 5 above, and further in view of Knispel et al. (U.S. 5,210,956) [hereinafter Knispel].

Hoffman as modified by Anderson disclosed all the subject matter claimed above in paragraph 3 with the exception of an attachment clip.

With respect to the attachment clip: Knispel discloses a tape measure, as shown in Fig. 2, having an attachment clip. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide an attachment clip as taught by Knispel, to the measuring device disclosed by Hoffman as modified by Anderson in order to securely mount the tape measure to a user's belt.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman (U.S. 5,894,677) in view of Anderson (U.S. 1,986,551) as applied to claims 1, 4 and 5 above, and further in view of Quenot (U.S. 3,004,346).

Hoffman as modified by Anderson disclosed all the subject matter claimed above in paragraph 3 with the exception of the specific increments of the indicia.

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With respect to the specific increments of the indicia: Quenot teaches the use of a tape 1 having scales on the top and bottom sides of the tape 1, said scales are marked in 1/16-inch increments. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a scale marked in 1/16-inch increments as taught by Quenot in order to be able to make more accurate measurements.

#### ***Response to Amendment***

6. The declaration filed on October 5, 2004 under 37 CFR 1.131 is sufficient to overcome the Odachowski reference.

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-5 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

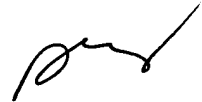
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Madeline Gonzalez whose telephone number is (571) 272-2243. The examiner can normally be reached on Monday-Friday (8:00-5:30), alternate Fridays off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG



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